

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Carriers Eligible for
Universal Service Support
Connect America Fund
WC Docket No. 09-197
WC Docket No. 10-90

ORDER

Adopted: April 27, 2020

Released: April 27, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates Fond du Lac Communications, Inc. (FDLCI) as an eligible telecommunications carrier (ETC) in CAF-eligible areas within Minnesota. Designation is conditioned upon, and limited to, FDLCI's authorization to receive Connect America support awarded through the Connect America Fund (CAF) Phase II auction and effective only upon such authorization. FDLCI also requests designation as an ETC in areas ineligible for Phase II auction funding authorization. For such areas, we limit the ETC designation to a Lifeline-only designation, making FDLCI only eligible to receive Lifeline support. In making these designations, the Bureau finds that FDLCI meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules. The Bureau also waives, on its own motion, the requirement that FDLCI submit on or before

1 See Petition of Fond du Lac Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket 09-197, WC Docket 10-90 (filed Sept. 13, 2018), https://www.fcc.gov/ecfs/filing/10913091726540 (Petition), as supplemented, Supplement to Petition of Fond du Lac Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket 09-197 (filed June 21, 2019), https://www.fcc.gov/ecfs/filing/106211614318083 (First Supplement), as supplemented, Further Supplement to Petition of Fond du Lac Communications, Inc., for Designation as an Eligible Telecommunications Carrier, WC Docket 09-197, WC Docket 10-90 (filed Jan. 24, 2020), https://www.fcc.gov/ecfs/filing/1012407526036 (Second Supplement), as supplemented, Second Further Supplement to Petition of Fond du Lac Communications, Inc., for Designation As an Eligible Communications Carrier, WC Docket 09-197, 10-90 (filed Apr. 22, 2020) (Second Further Supplement). This Order refers to the Petition and Supplements collectively as the Amended Petition.

2 See Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (2018) (Phase II Auction Closing Public Notice); see also Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (Phase II Auction Order).

3 See First Supplement at 1-2 (seeking Lifeline-only ETC designation in all areas of the Fond du Lac Reservation not awarded support in the CAF Phase II auction and additional nearby areas); Second Supplement at Exhibit 2 (submitting map of areas where FDLCI is seeking a Lifeline-only ETC designation).

4 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

February 25, 2019, proof of its ETC designation in all areas where it is authorized to receive support. The Bureau will release a separate public notice regarding Phase II auction funding authorization.

II. BACKGROUND

A. Connect America Fund Phase II Auction Support

2. The CAF Phase II Auction is one part of a multi-step process designed to comprehensively reform and modernize the high-cost component of the Universal Service Fund (USF).⁵ At the conclusion of this auction, 103 bidders won \$1.49 billion dollars in support over 10 years to provide fixed broadband and voice services to over 700,000 locations in high-cost areas in 45 states.⁶ In order to become authorized to receive support, winning bidders must complete a post-auction application (long-form application) designed to ensure that winning bidders are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving universal service support.⁷ As part of this application, Phase II auction winning bidders must certify that their ETC designation covers all relevant census blocks and submit supporting documentation, including an ETC designation order.⁸

B. Federal Universal Service Lifeline Support

3. The Lifeline – or low-income – program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support directed at such households in Tribal lands.⁹ Eligible services include voice and broadband Internet access service meeting certain requirements.¹⁰ In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the USF, or it may be designated as a Lifeline-only ETC that is only eligible to receive USF support from the Lifeline program.¹¹ Where, as here, a CAF Phase II long-form applicant seeks designation to serve areas for which Phase II auction funding is unavailable, the Bureau will treat the petition as a Lifeline-

⁵ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁶ See *CAF Phase II Auction Closing Public Notice*, 33 FCC Rcd at 8257.

⁷ 47 CFR § 1.21004; *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

⁸ 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1519, para. 310 (2018) (*CAF Phase II Auction Procedures Public Notice*); see also *Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

⁹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

¹⁰ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, paras. 30-32 (2016) (*Lifeline Modernization Order*).

¹¹ 47 CFR § 54.201(a)(1); *id.* § 54.101(d); *Lifeline Modernization Order*, 31 FCC Rcd at 3974, 4074-75, paras. 35, 311-12 (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

only petition.¹² All ETCs are obligated to offer Lifeline-supported services throughout their designated service areas.¹³

C. Requirements for FCC ETC Designation

4. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”¹⁴ Congress gives primary authority for ETC designations to state commissions.¹⁵ The FCC has authority only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹⁶ The petitioning carrier must demonstrate that the FCC has jurisdiction and may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”¹⁷ To the extent that the petition covers Tribal Lands, and the petitioner has not taken any action at the state level to initiate ETC proceedings, the petitioner may make an affirmative showing of FCC jurisdiction under relevant law.¹⁸ The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.¹⁹

5. A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;²⁰ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;²¹ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;²² and (5) a certification that

¹² *Wireline Competition Bureau Seeks Comment on Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Support*, WC Docket No. 09-197, Public Notice, 33 FCC Rcd 9764, 9767 (2018).

¹³ See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); see also *Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

¹⁴ 47 U.S.C. § 254(e).

¹⁵ *Id.* § 214(e)(2).

¹⁶ *Id.* § 214(e)(6).

¹⁷ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*); 47 U.S.C. § 214(e)(6).

¹⁸ *Phase II Auction Order*, 31 FCC Rcd at 6004, para. 154 (quoting *2000 Tribal Order*, 15 FCC Rcd at 12214, para. 7); *2000 Tribal Order*, 15 FCC Rcd at 12268-69 para. 126; see also *id.* at 12218-19, paras. 17-18 (defining Tribal lands to include “reservation” and “near reservation,” as those terms are defined under BIA’s regulations); 25 CFR § 20.1(r), (v).

¹⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

²⁰ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

²¹ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.²³

6. In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive high-cost support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high-cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.²⁴ A petitioner seeking designation in areas eligible for Lifeline-only support (Lifeline-only designation) must also: (1) demonstrate its financial and technical capability to provide Lifeline-supported services in accordance with applicable Commission rules; and, (2) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers.²⁵

7. For petitioners seeking ETC designation for the purpose of becoming authorized to receive Phase II auction support, the Bureau waived the requirements that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards, finding that the need for such requirements is obviated by specific service quality standards applicable to Phase II auction support recipients and specific reporting obligations relating to such standards.²⁶ Accordingly, a CAF Phase II Auction support recipient only need demonstrate its ability to meet applicable consumer protection and service quality standards for Lifeline-supported services in Lifeline-only eligible areas.

8. In addition, prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.²⁷ When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.²⁸ In the *Phase II Auction ETC Public Notice*, the Bureau found that recipients of Phase II auction support demonstrated their ability to offer service efficiently through the competitive bidding process and their ability to meet public interest obligations through their short- and long-form applications and, thus, need not submit additional support in their petitions.²⁹ Accordingly, only those petitioners that seek designation in Lifeline-only eligible areas need demonstrate that their Lifeline-only ETC designations serve the public interest.

(Continued from previous page) _____

²² An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forbore from imposing such requirements on CAF Phase II Auction support recipients and Lifeline-only ETCs. *See Phase II Auction Order*, 31 FCC Rcd at 6006-6009, paras. 159-168; *Telecommunications Carriers Eligible for Support*, WC Docket Nos. 09-197 and 11-42, Memorandum Opinion and Order, 28 FCC Rcd 4859 (2013).

²³ 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

²⁴ *See* 47 CFR § 54.202(a).

²⁵ *Id.* § 54.202(a)(4)-(6).

²⁶ *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2018) (*CAF Phase II Auction ETC Public Notice*).

²⁷ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

²⁸ *See, e.g., Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

²⁹ *CAF Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6700-6701.

D. Petition for ETC Designation

9. FLDCI seeks an ETC designation within the boundaries of the Fond du Lac Band of Lake Superior Chippewa Reservation (Reservation) (which includes most census blocks where FDLCI is eligible to receive Phase II auction support as well as additional areas) as well as limited areas outside the Reservation (which includes a few census blocks (or partial blocks) eligible for CAF Phase II support).³⁰ In areas where FDLCI is not eligible to receive CAF Phase II auction support, it may only be designated as a Lifeline-only ETC. The Bureau released a public notice soliciting comments on Fond du Lac's petition.³¹ No comments addressing the merits of the petition or the designation were received.

III. DISCUSSION

10. We find that FDLCI satisfies the Commission's requirements for ETC designation. We therefore designate it as a high-cost ETC in CAF-eligible areas, conditioned upon and limited to the high-cost areas where they are authorized to receive Phase II auction support and effective only upon such authorization. In these areas, FDLIC must meet Phase II auction requirements, Lifeline requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.³² In all other areas included in FDLCI's petition and not eligible for high-cost support, we designate FDLCI as a Lifeline-only ETC. In these areas, FDLCI must offer Lifeline-supported services to low-income consumers consistent with the requirements of the Act and the Commission's rules and in accordance with all representations and commitments made in its ETC petition.

A. Commission Authority

11. We find that the FCC has jurisdiction pursuant to section 214(e)(6) of the Act to designate FDLCI as an ETC. As a Tribally-owned and chartered entity operating on Tribal Lands, FDLCI is governed by the laws, regulations, and authority of the Fond du Lac Band of the Lake Superior Chippewa (Tribe).³³ The Tribe has issued a Corporate Charter and a Certificate of Good Standing to FDLCI, in addition to a resolution supporting its ETC designation, which allows FDLCI to provide telecommunication services throughout the Reservation and neighboring areas.³⁴ We thus find that FDLCI is not subject to the Minnesota Public Utility Commission's regulatory authority to designate ETCs. We note that FDLCI states that it notified the Minnesota Public Utilities Commission of the filing of the ETC petition (and supplements) and we have not received a comment from the Minnesota Public Utilities Commission challenging FDLCI's assertion that the FCC has jurisdiction to act on its ETC petition.³⁵ Accordingly, we find that the Bureau, acting under the Commission's delegation of authority,

³⁰ Third Supplement at Exhibits 1-2.

³¹ *Wireline Competition Bureau Seeks Comment on Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Auction Support*, Docket No. 09-197, Public Notice, 33 FCC Rcd 9764 (WCB 2018).

³² 47 CFR § 54.202(a)(1)(i); *id.* § 54.101(d); *Lifeline Modernization Order*, 31 FCC Rcd at 3974, 4074-75, paras. 35, 311-12.

³³ Petition at 5; *id.* at 103, Exhibit F (Fond du Lac of Chippewa Reservation Business Council, Resolution 1201/18, Adopting, Endorsing, and Supporting Fond du Lac Communications, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier) (Resolution); *see also* About Us, <http://www.aaniin.net/aboutus.html>; *see also* Treaty of LaPointe, 10 Stat. 1109 (Sept. 30, 1854) (creating the Fond du Lac Reservation as a sovereignty and perpetual home of the Fond du Lac Band of Lake Superior Chippewa).

³⁴ Petition at 5; *id.* at 101, Exhibit E.

³⁵ *Id.* at 7; *Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas*, WC Docket No. 09-197, Memorandum Opinion and Order, 25 FCC Rcd 12388, 12393, para. 14 (WCB 2010) ("Neither state commission contested the authority of the Commission to consider Standing Rock's ETC designation petition."); *see*

(continued...)

may designate FDLCI as an ETC on Tribal Lands for purposes of eligibility for Phase II auction support and as a Lifeline-only ETC in those areas where FDLCI is not eligible to receive Phase II auction support.

12. FDLCI also submitted an affirmative statement from the Minnesota Public Utilities Commission indicating that it would not exercise jurisdiction over FDLCI for the purpose of designating FDLCI as an ETC in the areas specified in its Amended Petition where it would otherwise have authority to do so under section 214(e) of the Act, including the limited areas outside Reservation boundaries.³⁶ Accordingly, we find that FDLCI has established the Commission's authority to so designate FDLCI as a ETC in these areas.

B. Eligibility Requirements

13. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that FDLIC establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.³⁷

14. *Compliance with the Service Requirements Applicable to Phase II Auction Support.* We find that FDLIC has met its requirement to certify that it will comply with service requirements applicable to the support that it receives.³⁸ This determination takes into account that, prior to being authorized to receive Phase II auction support, CAF Phase II auction participants must certify and demonstrate, as part of their short- and long-form applications, the technical and financial ability to provide voice and broadband services meeting or exceeding CAF Phase II standards,³⁹ certify their commitment to meeting relevant public interest obligations,⁴⁰ and certify their compliance with all statutory and regulatory requirements for receiving the universal service support.⁴¹ Moreover, once authorized, CAF Phase II Auction support recipients must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.⁴²

15. *Compliance with Service Requirements Applicable to Lifeline Services.* FDLIC commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.⁴³ For areas that are not eligible for Phase II auction support, FDLIC specifically commits to meeting Lifeline consumer enforcement and

(Continued from previous page) _____

also Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 9163, para. 10 & n.27 (2011) ("No party argues that either the North Dakota Commission or the South Dakota Public Utilities Commission has jurisdiction to designate Standing Rock, a Tribally owned, Tribally operated carrier that seeks to serve its own reservation as an ETC.").

³⁶ Second Further Supplement at Ex. 1.

³⁷ Petition at 9-11; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

³⁸ 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

³⁹ *Id.* §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

⁴⁰ *Id.* § 54.315(b)(2)(iii).

⁴¹ *Id.* § 54.315(b)(2)(v).

⁴² *Id.* § 54.313 (requiring annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40 (describing reporting obligations of CAF Phase II Auction support recipients).

⁴³ Petition at 15-17.

certification standards and describes how it intends to meet such standards.⁴⁴ We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, USAC, and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.⁴⁵

16. *Offering the Supported Services Using a Carrier's Own Facilities.* FDLIC certifies that it is a facilities-based provider of broadband and voice services.⁴⁶

17. *Advertising Supported Services.* FDLIC commits to advertising the availability of the supported services and related charges using media of general distribution.⁴⁷ We emphasize that, as part of this commitment, FDLIC must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.⁴⁸

18. *Ability to Remain Functional in Emergency Situations.* FDLIC states that it can remain functional in emergency situations. FDLIC states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.⁴⁹

19. *Anti-Drug Abuse Act Certification.* FDLIC submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.⁵⁰

20. *Consumer Protection and Service Quality Standards in Lifeline-Only Eligible Areas.* FDLIC commits to abiding by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules, in Lifeline-only eligible areas.⁵¹

21. *Technical and Financial Ability to Offer Lifeline Services in Lifeline-Only Eligible Area.* FDLIC demonstrates the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in Lifeline-only eligible areas.⁵² This determination is informed by the technical and financial information filed by FDLIC in its Phase II auction application for the high-cost eligible areas generally contiguous with the Lifeline-only eligible area.⁵³

⁴⁴ Second Petition at 5-7; 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determinations and certifications).

⁴⁵ 47 CFR § 54.422; *see also id.* § 54.410.

⁴⁶ Petition at 12; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁴⁷ Petition at 11; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

⁴⁸ 47 CFR § 54.405; Second Petition at 3-4.

⁴⁹ Petition at 13; 47 CFR § 54.202(a)(2).

⁵⁰ Petition at 23; 47 CFR § 1.2002.

⁵¹ Petition at 13-14; Second Supplement at 2-3; 47 CFR § 54.202(a)(3).

⁵² Petition at 14; Second Supplement at 3; 47 CFR § 54.202(a)(4).

⁵³ 47 CFR § 54.315(a) (requiring applicants seeking to participate in CAF Phase II Auction to submit certifications and supporting information regarding their technical and financial ability to provide service); *id.* § 54.315(b)(2) (requiring further certifications and information in the long-form application regarding the winning bidders' technical and financial ability to provide service); *id.* § 54.310(e)(1) (providing that an applicant in the competitive bidding process must certify that it is financially and technically qualified to provide the services supported by CAF Phase II Auction in order to receive such support); *see CAF Phase II Auction Procedures Public Notice*, 33 FCC Rcd 1428.

22. *Terms and Conditions of Service Plans in Lifeline-only Eligible Area.* FDLIC sufficiently describes the terms and conditions of service plans that it will make available to the public in Lifeline-only eligible areas.⁵⁴

C. Public Interest Analysis

23. We conclude that FDLIC's participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, ETC designations in areas where a petitioner is authorized to receive CAF Phase II Auction support serve the public interest. Through participation in the auction bidding and application processes, FDLIC has demonstrated that it can offer voice and broadband services in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas. Moreover, granting FDLIC's petition will serve the interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in areas eligible for Phase II auction support.

24. We further find that granting FDLIC's petition to serve additional areas within the Reservation not eligible for Phase II auction support ensures that Lifeline services are available in all areas where FDLIC provides service. FDLIC commits to offering Lifeline-supported services throughout its designated areas and to preventing waste, fraud, and abuse through customer education, certification, and verification procedures.⁵⁵ Given these commitments and associated representations, granting the ETC designations will help ensure increased consumer choice, affordability, and improved quality of service.

25. Accordingly, based on the information, representations, and certifications in its petition, we find that FDLIC has met all applicable conditions and prerequisites for ETC designation and conditionally grant its petition.

D. Regulatory Oversight

26. Under section 254(e) of the Act, an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵⁶ Under section 214(e) of the Act, an ETC must provide supported services throughout its service area.⁵⁷ When authorized to receive high-cost support, an ETC must file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁵⁸ The Commission conditions future support awarded through the high-cost program on the filing of such certification.⁵⁹

27. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁶⁰ In addition,

⁵⁴ Petition at 14-15; *id.* at Exhibit C; Second Supplement at 1-2; 47 CFR § 54.202(a)(5), (6).

⁵⁵ Petition at 7-8; Second Supplement at 4-7.

⁵⁶ 47 U.S.C. § 254(e).

⁵⁷ *Id.* § 214(e).

⁵⁸ 47 CFR § 54.314(b).

⁵⁹ *Id.*

⁶⁰ See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.⁶¹

28. We find that reliance on FDLIC's commitments to meet these and other regulatory requirements, as well as representations and commitments made in its petition, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that FDLIC satisfies its obligation under section 214(e) of the Act to provide supported services throughout its respective designated service areas.

29. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC.⁶² FDLIC must provide such records and documentation to the Commission and USAC upon request.⁶³ If FDLIC fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁶⁴ The Commission also may assess forfeitures for violations of Commission rules and orders.⁶⁵

E. Waiver of Deadline for Submitting Proof of ETC Designation

30. Phase II auction winning bidders were required to certify that they are ETCs in all bid areas and to submit appropriate documentation supporting such certification on or before February 25, 2019.⁶⁶ The Bureau finds, on its own motion, good cause to waive this deadline for FDLIC.⁶⁷ The Commission has found that waiver of this deadline is appropriate when an ETC designation proceeding is not yet complete by the deadline despite the good faith efforts of the long-form applicant.⁶⁸ The Commission has explained that it would presume such good faith efforts when the petitioner submitted its petition to the relevant authority within 30 days of the release of the *Phase II Auction Closing Public*

⁶¹ 47 CFR § 54.422(b)(3); *see also id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that will comply with all federal Lifeline certification procedures).

⁶² 47 U.S.C. §§ 220, 403.

⁶³ 47 CFR § 54.417.

⁶⁴ *Id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

⁶⁵ *See* 47 U.S.C. § 503(b).

⁶⁶ 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *CAF Phase II Auction Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *see also Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

⁶⁷ The Commission has delegated to the Bureau the authority to grant waivers of the filing deadline. *See Phase II Auction Order*, 31 FCC Rcd at 603 & n.315; *see also* 47 CFR §§ 0.91(p) (functions of the Wireline Competition Bureau), 0.291 (delegation of authority to the Wireline Competition Bureau).

⁶⁸ *See CAF Phase II Auction Closing Public Notice*, 33 FCC Rcd at 8268, para. 35 (citing *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53). The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation

(continued....)

*Notice.*⁶⁹ FDLIC filed its petition with the FCC within this 30-day time frame, thus demonstrating due diligence in meeting its filing deadline.

IV. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that FOND DU LAC COMMUNICATIONS, INC. IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN MINNESOTA FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE CONNECT AMERICA PHASE II AUCTION. This designation is contingent on the Fond du Lac Communications, Inc. becoming authorized to receive such support, is limited to those areas where support is authorized and is effective only upon authorization.

32. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, FOND DU LAC COMMUNICATIONS, INC. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER ELIGIBLE ONLY FOR LIFELINE SUPPORT for those portions of the designated service area for which it is not eligible to receive high-cost support, to the extent described in this Order.

33. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the deadline specified in section 54.315(b)(5) of the Commission's rules, 47 CFR § 54.315(b)(5), IS WAIVED to the extent described above.

34. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Minnesota Public Utilities Commission and to the Universal Service Administrative Company.

35. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

(Continued from previous page) _____
will serve the public interest. *See Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Deadlines can only be waived under "unusual or compelling circumstances." *Id.* at 126 (citation omitted).

⁶⁹ *See CAF Phase II Auction Closing Public Notice*, 33 FCC Rcd at 8268-69, para. 35.

ATTACHMENT

Winning Bidder ⁷⁰	Date Petition Filed	State(s)	Number of Census Blocks ⁷¹	Number of Supported Locations
Fond du Lac Communications, Inc.	9/13/18	MN	8	13

⁷⁰ Pursuant to the divide winning bid process established in the *Phase II Auction Closing Public Notice*, Fond du Lac Reservation Business Council assigned its winning bid to Fond du Lac Communications, Inc. *Phase II Auction Closing Public Notice*, 33 FCC Red at 8259-8260, paras. 9-13.

⁷¹ Consistent with the requirements specified for completion of the long-form application and as described above in this Order, we define the designated service area for the bid area based on the published list of CAF-eligible census blocks associated with the winning bid, thus superseding any discrepancies in the petition's descriptions of such areas. See Connect America Fund Phase II: Assignments - Assigned Census Blocks, https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks. We have confirmed that the census blocks listed here are within the designated service area.